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No. 84-708

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

AMERICAN HORSE SHOWS ASSOCIATION, INC.,
Petitioner,

—v.—

NEIL G. GALATZ AND ELAINE GALATZ,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF NEVADA

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Does Nevada's exercise of personal jurisdiction over a nationwide association present an important, unresolved question of constitutional law where the association is sued for breach of a contract with substantial Nevada contacts and for tort and defamation, where the injuries are foreseeably felt in Nevada?

PARTIES

The parties participating in the proceedings before the Supreme Court of Nevada were Neil G. Galatz and Elaine Galatz, petitioners for writ of mandamus to the Eighth Judicial District Court of the State of Nevada, nominal respondent, and American Horse Shows Association, Inc., the real party in interest. The Eighth Judicial District Court did not participate other than through the real party in interest. The relationship of these two parties was not adversarial.

Correspondingly, the caption styled by the American Horse Shows Association, Inc., is inappropriate, as it depicts the state trial court as a respondent herein. Respondents GALATZES have corrected the caption on this brief.

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RESPONDENTS' BRIEF IN OPPOSITION

OPINIONS BELOW

The opinion of the Supreme Court of Nevada granting a writ of mandamus is reported at 100 Nev. Adv. Op. No. 86, 683 P.2d 26 (July 3, 1984) and is annexed as an appendix to the Petition. (Pet. at 1a.) No party petitioned the Nevada Supreme Court for rehearing. The order of the Eighth Judicial District Court, State of Nevada, quashing service of Respondents' complaint and summons is unreported and is annexed to the Petition. (Pet. at 10a.)

STATEMENT OF THE CASE

This case arises from a complaint filed by Respondents GALATZES, alleging breach of contract and tortious harm to their Nevada horse breeding and raising business. Respondents are members[1] of the Petitioner American Horse Shows Association, Inc. ("AHSA"). As members, Respondents are subject to and benefit from AHSA rules.

The GALATZES' AHSA membership applications and dues were sent from Nevada, the state of Respondents' residence and horse business. The GALATZES have been AHSA members since about 1976.

The Petitioner AHSA holds itself out as a nation-wide organization for the benefit of horse enthusiasts. AHSA, by its constitution, serves to make rules governing horse competitioners, to license judges, to adjudicate questions of rules violations and generally to assist in exhibition of horses. (AHSA Constitution, Article II[b], [c], [e] and [q].) The functions performed by AHSA in the forum, as found by the Nevada Supreme Court, include:

> For example, in 1981, AHSA had 278 members in Nevada; AHSA collected $6950 in dues from those Nevada members and collected $21,424 from participating non-members. Further, AHSA had seven registered judges and seven certified stewards residing in Nevada, and recognized 24 horse shows held in Nevada. AHSA also mailed membership-related materials into Nevada, as well as prize lists, premium lists, the "Horseshow Magazine," AHSA's 1981 rule book, amateur cards, entry blanks, membership applications, and

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[1] Respondents' pertinent capacity is as AHSA members. Petitioner's repeated description of Mr. Galatz as an attorney is relevant only to the fact that Respondents may have been able to pursue this litigation while others could not. Consequently, Respondents will be referred to herein as Members Galatzes.

advertisements promoting AHSA. Finally, AHSA apparently selected and paid for veterinarians to test for drugs at five Nevada horse shows.

AHSA's contacts are more fully set out in this opposition, *infra* at 6 through 13.

The instant litigation arose in May 1981, when Members GALATZES attended an AHSA-sanctioned horse show, the Morgan Classic Royale in Santa Rosa, California. There the GALATZES entered a Morgan horse, "Jade's Hot Shot," in the show. The horse won the competition in its class, but subsequently was disqualified because the horse's hoof was mismeasured as being too long. Members allege, among other things, that measurements were taken by means which violated AHSA Rules.

The AHSA Members logged with the show committee an immediate protest, involving numerous violations of AHSA Rules. The protest was ignored and was never brought to hearing. The GALATZES then entered the same protest to the American Horse Shows Association, Inc., itself. By letter, the AHSA informed the GALATZES that the AHSA Hearing Committee met on June 10, 1981, and decided that the GALATZ protest was not appealable.

The GALATZES then brought suit in state court, claiming that AHSA violated its constitution and rules by failing to investigate, to hold a hearing and to rule upon the matter. This violation, the GALATZES averred, caused damages including costs of participating in the AHSA-recognized show, damage to the reputation of the horse as a performance and breeding stallion, and embarrassment and public humiliation to the GALATZES. The members prayed for damages in excess of $3,000, but less than $10,000.[2]

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[2] AHSA in its petition appears to argue the merits of the case, going far beyond the complaint, the service of which it wishes to quash. Petitioner's argumentative portrayal is irrelevant to the only issue before the state appellate court: Nevada's jurisdiction over the Petitioner AHSA.

THE PROCEEDINGS BELOW

Before the state trial court, AHSA specially appeared and moved to quash service of summons and complaint, claiming that Nevada lacked *in personam* jurisdiction over it. The Eighth Judicial District Court agreed and granted the motion.

The GALATZES then filed with the Supreme Court of Nevada a petition for writ of mandamus, seeking, in effect, a reversal of the trial-level court. The Nevada Supreme Court issued the writ.

The state's high court found that AHSA was, indeed, transacting business within the meaning of the Nevada long-arm statute, N.R.S. 14.065 (2). The Court based this conclusion on, first, the AHSA's generally extensive contacts with Nevada and, more importantly, on the specific relationship those contacts bore to the instant litigation. The Nevada Supreme Court expressly held that "... the cause of action does appear to arise from AHSA's activities in Nevada." 100 Nev. Adv. Op. 86 at 4, 683 P.2d at 29, Pet. at 6a.

No rehearing was requested. The present petition for certiorari followed.

REASONS FOR DENYING THE WRIT

THIS CASE PRESENTS NO UNRESOLVED IMPORTANT QUESTION OF CONSTITUTIONAL LAW

The only question here is whether Petitioner AHSA maintained sufficient contacts with the forum to be susceptible to

in personam jurisdiction[3] in a suit for breach of contract and for business defamation.

This Same Issue Was Resolved By This Court Last Term.

AHSA contends that this petition would present issues of specific jurisdiction left unanswered in *Helicopteros Nacionales de Colombia v. Hall*, 52 U.S.L.W. 4491 (1984). More correctly, this case recites questions fully resolved by two other October 1983 term decisions, *Keeton v. Hustler Magazine, Inc.*, 52 U.S.L.W. 4346 (1984) and *Calder v. Jones*, 52 U.S.L.W. 4349 (1984).

Decisions applying the Due Process Clause of the Fourteenth Amendment often turn on a "weighing of facts." *Helicopteros Nacionales de Colombia v. Hall, supra* at 4494 (Brennan, J., dissenting); *see, Kulko v. California Superior Court*, 436 U.S. 84, 92 (1978); *id.*, at 101-102 (Brennan, J., dissenting). The facts in this case make clear that AHSA transacts business in Nevada and that this cause of action arises from or is related to those Nevada activities. Therefore, personal jurisdiction is established.

AHSA Was Transacting Business.

In evaluating minimum contacts, the focus is properly on "the relationship among the defendant, the forum, and the litigation." *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977). AHSA's conduct towards its members, the GALATZES, centers around Nevada. Indeed, "Plaintiff's residence may well play an important role in

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[3] Certain minimum contacts by a defendant with the forum are required to achieve personal jurisdiction over that defendant under the Due Process Clause of the Fourteenth Amendment. The Nevada long-arm statute reaches the outer limits of Federal Constitutional Due Process. *Certain-Teed Products Corp. v. Second Judicial District Court*, 87 Nev. 18, 479 P.2d 781 (1975).

determining the propriety of entertaining a suit against the defendant in the forum." *Keeton*, 52 U.S.L.W. at 4348. Plaintiff's residence, as here, may be the focus of the activities of the defendant out of which the suit arises. *See Calder v. Jones, supra; McGee v. International Life Insurance Co.*, 355 U.S. 220 (1957).

This Court has upheld jurisdiction where the only act within the forum consisted of mailing an insurance policy to and receiving premiums from an insured resident. *See McGee v. International Life Insurance Co., supra.* In comparison, the AHSA has admitted to performing many acts in Nevada. It conceded in discovery and the GALATZES proved the following Nevada contacts:

1. There were 278 members of AHSA in Nevada in 1981.

2. AHSA collected $6,950.00 in dues from its members in Nevada in 1981.

3. There are seven AHSA Registered Judges in Nevada.

4. The Nevada AHSA Registered Judges paid $60.00 in initial fees to AHSA in 1981.

5. The Nevada AHSA Registered Judges paid $250.00 in 1981 to AHSA for renewal and division fees.

6. There are seven AHSA certified stewards in Nevada.

7. The Nevada AHSA certified stewards paid $70.00 to AHSA in 1981 for renewal fees.

8. $21,424.00 was received by AHSA in 1981 from non-AHSA members participating in AHSA-recognized shows held in Nevada.

9. In 1981 AHSA was paid $545.00 for guest cards issued to judges for shows held in Nevada.

10. $1,985.00 was paid to AHSA by Nevada Horse Shows in 1981 for fees based on prizes offered at Nevada Horse Shows.

11. AHSA provides through the mail to its Nevada members responses to inquiries concerning interpretation of its rules.

12. Twenty-four AHSA recognized shows were held in Nevada in 1981.

13. AHSA requires each Nevada show which desires recognition to secure AHSA's approval of the dates upon which the show will be held. The show in applying for dates agrees:

> "In applying for the above dates this show agrees to abide by the rules of the AHSA and understands that failure to do so constitutes a violation of the rules which may subject the show to penalty under the provisions of Rule XI, Part II, Sec. 2' (Rule 1, Part 1, Sec. 21)."

14. Each and every month AHSA mails "Horseshow Magazine" to its Nevada members.

15. AHSA mails each year its Rule book to its Nevada members.

16. AHSA assessed and collected drug fees for all horses shown in all 24 AHSA recognized shows held in Nevada in 1981.

17. $4,821.00 was collected by AHSA for drug fees in 1981 at only nine out of 24 shows held in 1981. The total amount paid to AHSA from the remaining 1981 Nevada shows is not known to counsel at this time, but if averages based on the known figures are used, AHSA received an additional $8,070.00 in drug fees in Nevada in 1981.

18. The AHSA selected and paid veterinarians in the state of Nevada to check on drugs at five Nevada shows in 1981.

19. The AHSA hears appeals arising from protests of exhibitors and complaints against rules arising from horse shows in Nevada and California.

20. Upon appropriate findings AHSA disciplines exhibitors, trainers and shows for infractions of rules occurring at shows held in Nevada.

21. Funds, support and assistance for equestrian events at the Olympics, Pan American Games and other international competitions are solicited by AHSA in Nevada.

22. The AHSA-recognized horse shows held in Nevada in 1981 were each supplied with a pamphlet containing guidelines prepared and distributed by AHSA, setting forth for each show manager the AHSA guidelines.

23. Stewards and technical delegates, pursuant to AHSA requirements, sent reports following each of the 24 shows held in Nevada to AHSA in 1981.

24. Prize lists and official show results were sent to AHSA, pursuant to AHSA requirements, by show management 24 times in 1981, sent following each recognized show.

25. AHSA issues to the Nevada AHSA members amateur cards which qualify them to compete in classes restricted to amateurs.

26. For a charge of $20.00 per card, AHSA issues amateur cards to Nevada domiciliaries who are not AHSA members.

27. Additional fees are authorized to be charged and collected by AHSA from shows, clubs and persons resident in Nevada for each of the following purposes:

(a) Change of a horse's name;

(b) Change of a show's name;

(c) Recording leases on horses;

(d) For medal classes;

(e) For protests;

(f) For recording horses; and

(g) For registration of stable and farm names.

Respondents unfortunately cannot provide the Court with the amounts of fees since AHSA did not answer fully the pertinent Interragatory 31 nor did AHSA produce the financial statements requested by Plaintiffs.

28. While AHSA apparently has not held conventions, seminars or clinics in Nevada, it does invite Nevada AHSA members to attend these events which are held periodically all around the United States of America.

29. AHSA publishes calendars of AHSA recognized shows which are distributed to its 278 Nevada members.

30. Names of Nevada residents and their horses which are suspended by AHSA are published and disseminated to all AHSA members throughout all 50 states.

31. AHSA provides to AHSA members show report and judge evaluation forms for use by its members (including those in Nevada). These forms are returned to AHSA. To provide ". . . information as to the conduct and facilities at member shows, the show standards committee urges . . . [AHSA members] to fill [in] . . . the questionnaire . . . [to] enable the [AHSA] committee to evaluate the quality of each show."

32. AHSA does advertise in Nevada. All other AHSA recognized show premium lists carry a pitch for and application for membership in AHSA. AHSA has further advertised in Nevada through "Horseshow Magazine" and advertising circulars.

AHSA has carried on activities in Nevada as set forth above for many years.

AHSA has purposely availed itself of the privilege of acting in the forum by accepting the GALATZES' entry blanks and fees from Nevada, by holding "recognized" shows in Nevada and using that State's parks and recreational facilities, not to mention its policing powers, for those shows.

AHSA had direct contact with Respondents by the following means:

1. Membership in AHSA.

2. Payment of dues for AHSA.

3. Consultation with and being judged by Nevada and other AHSA recognized judges.

4. Showing at shows officiated by resident and non-resident AHSA certified stewards.

5. Participating in numerous shows in and outside Nevada at which non-AHSA members were required to pay fees.

6. Participation in and outside Nevada in shows at which the judges were issued AHSA guest cards.

7. Payment by Respondents of show entry fees in and outside Nevada which, in part, were remitted to AHSA for fees based on prizes offered at such shows.

8. Reliance upon AHSA Rule interpretations and opinions.

9. Participation in shows in and outside Nevada because of the assurance they were recognized by and governed by the Rules of AHSA.

10. Receipt of "Horseshow Magazine" each month by Respondents.

11. Receipt of and reliance upon the AHSA Rule Book in determining proper procedure and conduct at shows.

12. Payment of drug fees to AHSA both in and outside Nevada for each horse shown at each show. ch show.

13. Respondents' horses have been drug checked by veterinarians selected by and paid by AHSA.

14. Respondents have attempted, as alleged in their complaint in this action, to utilize the AHSA protest and appeal procedure by mailing from Nevada to AHSA their protest and appeal.

15. Respondents have followed and relied upon the AHSA published reports concerning penalties and suspensions of horses, exhibitors and officials.

16. Respondents have received AHSA-sponsored award information and invitations to participate in such awards.

17. Respondents have received invitations to attend AHSA conventions, clinics and seminars.

18. Respondents hold and have used their AHSA amateur cards repeatedly both in and outside the State of Nevada so as to be able to participate in AHSA recognized shows.

19. Respondents read and utilize the AHSA published calendar of horse shows in planning their show season and activities.

20. Respondents have often mailed to AHSA from Nevada the AHSA show report and judge evaluation questionnaire.

21. Respondents have availed themselves of the opportunity to participate in AHSA Rule revision procedures.

The Cause Of Action Arises From Or Relates To AHSA's Nevada Business.

It is beyond doubt that a forum has a significant interest in redressing injuries that actually occur within the state. *Keeton v. Hustler,* 52 U.S.L.W. at 4347. Just as in *McGee v. International Life Insurance Co, supra,* and *Calder v. Jones, supra,* AHSA's activities from which the action arose converge in Nevada.

As in *McGee,* the contractual relationship between the parties was initiated by application and payment from the forum. As found by the Nevada Supreme Court, "AHSA solicits members, such as [the GALATZES], for its organization in Nevada; presumably those members join the AHSA in reliance upon its constitution and rules." (Pet. at 5a-6a.)

By lending its name to the Morgan Classic Royale, AHSA has assured the GALATZES, as Nevada residents deciding whether to travel to California, that the show would be held in accordance with the Association's standards and rules. Respondents in determining to enter the Morgan Classic Royale and other shows relied upon:

1. AHSA assured that the show would be governed by AHSA Rules.

2. AHSA assured that the show would be officiated by judges and stewards certified and recognized by AHSA as qualified.

3. Respondents paid from Nevada $299.00 in fees for the Morgan Classic Royale which, in part, was remitted to AHSA for charges based upon prizes offered at the Morgan Classic Royale.

4. Respondents, upon entering the Morgan Classic Royale, authorized their trainer to agree to the terms and conditions of entry prescribed by AHSA on the Morgan Classic Royale entry blank.

5. Respondents were solicited to attend the Morgan

Classic Royale in Nevada and were "assured" among other things by the show with AHSA approval of:

(a) ". . . the highest degree of fairness and equality . . .."

(b) ". . . the right to appeal to . . . (AHSA)"

(c) ". . . the highest quality of judging . . ."

6. "Jade's Hot Shot," the stallion whose prize was recalled and who is the basis of this suit, has been held out and advertised as standing at stud both verbally and in show programs published and disseminated in Nevada.

Further, AHSA offered to Respondents remedies and procedures to follow to ensure proper policing of horse shows by the Association. When the Galatzes tried to utilize such procedures from Nevada, they were denied relief.

Consistent with *Calder,* personal jurisdiction is also established in Nevada because, although the AHSA's tortious and defamatory acts may have been committed elsewhere, their effects were felt in the forum, home to the GALATZES and their horse ranch. The damages claimed by the Respondents include the impairment of the value of the horse for breeding purposes, the impairment of the sale value of the stallion, and humiliation and embarrassment caused to Respondents by having the prize recalled and being accused of violating the AHSA Rules. Respondents have been called upon to explain the events occurring at the Morgan Classic Royale to other horse owners and breeders in Nevada, many of whom are potential customers of Respondents.

The tortious conduct by AHSA impugned the professionalism of the GALATZES as horsemen and breeders. The injury, both to Respondents' business reputation and to the value of their horse as an investment, was suffered in Nevada. Jurisdiction over Petitioner is, therefore, proper in Nevada based upon the "effects" there of AHSA's conduct, whether that conduct be construed as

taking place in Nevada, California or New York.[4] AHSA knew that the brunt of its tortious denial of members' rights would be felt by the GALATZES in the state in which they live and work. Compare, *Calder v. Jones,* 52 U.S.L.W. at 4351. The foreseeable effect was to cause injury to the GALATZES in Nevada "regardless of any metaphysical locus of breach or conspiracy." *Tauber v. Girard,* 655 F.2d 991 (9th Cir. 1981), relying on *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286 (1980).

Nevada Jurisdiction Was Reasonably Foreseeable.

As Petitioner AHSA has deliberately exploited the Nevada membership market and then has allegedly reneged on its membership arrangement with Nevada citizens, it must "reasonably anticipate being haled into court there" to answer for its representations, its omissions and the resulting injuries. *See World-Wide Volkswagen Corp. v. Woodson, supra* at 297. A member defamed and injured in Nevada need not go to New York to seek redress for intentional conduct, such as AHSA's denial of a hearing, where the repercussions are foreseeably felt in Nevada.

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4 As stated by the American Law Institute:

> Every state has a natural interest in effects occurring within its territory, even if the act causing those effects was committed elsewhere . . .
>
> If a defendant commits an act or omission outside the forum state with the intent to cause a tortious effect within the state, the state may exercise jurisdiction over the defendant as to any cause of action arising from the effects. The intent to cause tortious injury within the state when the tort actually occurs is generally a sufficient basis, without more, for the exercise of *in personam* jurisdiction. "The act may have been done with the intention of causing effects in the state. If so, the state may exercise the same judicial jurisdiction over the actor, or over the one who caused the act to be done, as to causes of action arising from these effects as it could have exercised if these effects had resulted from an act done within its territory."

Restatement 2d, *Conflict of Law,* §*37, com. a; quoted in Jones v. Calder, 138 Cal. App. 3d 128, 187 Cal Rptr. 825 (1982), aff'd, Calder v. Jones,* 52 U.S.L.W. 4349 (1984).

These Nevada residents would be at a severe disadvantage if they were forced to follow the association to a distant forum in order to hold it legally accountable. As explained by Justice Black, "When claims were small or moderate individual claimants frequently could not afford the cost of bringing an action in a foreign forum – thus in effect making the company judgment proof." *McGee v. International Life Insurance Co.*, 355 U.S. 220, 223 (1957).

The Nevada Court stated it succintly: "AHSA's action of encouraging, promoting and soliciting members in Nevada, coupled with the other activities and contacts mentioned above, are such that AHSA should have reasonably anticipated that it might be subject to litigation in this state." 683 P.2d at 29. AHSA has formed bonds with the forum through its membership activities. The violation of those bonds, with corresponding injuries felt in the forum, establish sufficient nexus between AHSA and Nevada for personal jurisdiction.

AHSA overinflates its arguments, however, claiming that the state court decision stands for the proposition that a corporation is subject to general jurisdiction wherever a member resides. This was not the conclusion of the Nevada Court. The Court stated simply that the Members GALATZES' action for a specific breach of the Association constitution arose from the AHSA's contacts with Nevada. The breach, moreover, was directed specifically at the Nevada members.

This case squarely presents the issues of specific jurisdiction, which were evaluated and clarified in *Keeton* and *Calder.* To use the words of Justice Brennan, "These contacts between the [defendant] and the forum state are sufficiently important and sufficiently related to the underlying cause of action to foreclose any concern that the constitutional limits of the Due Process Clause are being violated." *Keeton v. Hustler Magazine, Inc.*, 52 U.S.L.W. at 4349 (Brennan, J., concurring).

CONCLUSION

For the reasons stated above, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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